

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

JON HANSON and JAMES
DeMARTINI, Individually and On Behalf
of All Others Similarly Situated,

Plaintiffs,

v.

BERTHEL FISHER & COMPANY
FINANCIAL SERVICES, INC.,

Defendant,

v.

THOMPSON NATIONAL
PROPERTIES, LLC, TNP 2008
PARTICIPATING NOTES PROGRAM,
LLC, and ANTHONY W. THOMPSON,

Third-Party Defendants.

No. 13-cv-67-LRR

**ORDER APPROVING ATTORNEY
FEES, EXPENSES AND SERVICE
AWARDS**

This matter came for hearing on September 15, 2015 (the "Settlement Hearing") on the unopposed Motion for Plaintiffs' Attorney Fees, Expenses and Service Awards (D. E.131) for attorney fees, reimbursement of costs and expenses and for two service awards. Plaintiffs' seek a total of \$450,000 for attorney fees, expenses and two service awards.

NOW, THEREFORE, THIS COURT HEREBY FINDS AND ORDERS:

1. There are two methods by which attorneys' fees may be calculated, and

awarded: the lodestar method and the percentage-of-the-fund method. *See Johnston v. Comerica Mortg. Corp.*, 83 F.3d 241, 246 (8th Cir. 1996). “It is within the discretion of the district court to choose which method to apply.” *Id.*

2. Under either method, this Court finds the requested attorneys’ fees reasonable. Class Counsel have provided Declarations demonstrating that they have incurred lodestar of \$743,127.00 as of July 31st, 2015 (D. E. 131).

3. Settlement Class Counsel provided Declarations accounting for over 1,861.7 hours invested by counsel and associates in this complex litigation. The rates for these hours range from \$250 for associated attorneys and \$350 – \$750 for partners.

4. At the hearing, Settlement Class Counsel indicated they have incurred additional lodestar preparing for this hearing and additional expense for which they seek no further fees or expense.

5. I find these rates reasonable in the circumstances and further find so based upon the supporting Declaration of Brady J. Brady (D. E. 135) and Affidavit of Steven P. Wandro (D. E.137).

6. Further, in light of the number of hours invested by counsel, the reasonability of the hourly rates, the risk inherent in contingent based compensation, the novelty and complexity of the issues, and the quality and outcome of attorneys result, the Court finds the fees fair and reasonable. In re: *UnitedHealth Group Inc. S’holder Derivative Litig.*, 631 F. Supp 2d. 1151, 1158-59 (D, Minn. 2009) (citing *Grunin*, 513 F.2d at 127).

7. This is supported by the fact that the requested attorney fees are in fact a negative lodestar, as set forth in their motion and supporting Declarations (Docket Entry 131).

8. This amount is also supported when using the percentage of the fund approach. Settlement Counsel are asking for attorney fees, expenses and service awards which total \$450,000, which amounts to approximately 15.7% of the cash component of the settlement of \$2,865,000.

9. Finally, The Court approves the expenses and costs incurred as being fair and reasonable given this complex litigation and the actual work performed.

10. Settlement Class Counsel has requested and there is no opposition to service awards, in the amount of \$10,000 each to class representatives, Mr. Hanson and Mr. DeMartini.

11. This Court finds that Mr. Hanson and Mr. DeMartini have been significantly involved in this litigation, including having given their deposition testimony. Also their efforts and time served to protect the interests of the class were significant. I find that \$10,000 service award for each to be fair and reasonable.

WHEREFORE, based upon the submissions and for the reasons set forth above, Plaintiffs' Application for Attorney Fees, Expenses and Service Awards is **GRANTED** as follows.

\$430,000.00 Attorney Fees, Expenses and Costs

\$10,000.00 service award to Mr. Hanson;

\$10,000.00 service award to Mr. DeMartini;

\$450,000 Total Fees, Expenses, and Services Awards.

IT IS SO ORDERED.

DATED this 16th day of September, 2015.



LINDA R. READE
CHIEF JUDGE, U.S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA